



Court File No. **VLC-S-H-121044**

No. _____,
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
Re: 26123 – 126th Avenue, Maple Ridge, British Columbia V2W 1C4

BETWEEN:

HOME TRUST COMPANY

PETITIONER

AND:

**STEWART EDWARD IRVINE
CARMEL YOKO RICHTER
SHERWIN JACK-YEN HO
OLYMPIA TRUST COMPANY, IN TRUST
JOHN DOE (TENANT) and JANE DOE (TENANT)**

RESPONDENTS

PETITION TO THE COURT

(Name and address of each petitioner)

**HOME TRUST COMPANY
c/o its solicitors, Bakonyi & Company
Barristers and Solicitors
Attention: Ron Bakonyi
206 – 1110 Hamilton Street
Vancouver, B.C., V6B 2S2
Telephone: (604) 688-7700
Fax Number for Delivery: (604) 688-7799**

(Name and address of each petition respondent)

**STEWART EDWARD IRVINE
26123 – 126th Avenue, Maple Ridge, BC V2W 1C4**

**CARMEL YOKO RICHTER
3346 Thor Court, Coquitlam, BC V3E 3A7**

SHERWIN JACK-YEN HO
1157 Templeton Drive, Vancouver, BC V5L 4N9

OLYMPIA TRUST COMPANY
1003 - 750 West Pender Street, Vancouver, BC V6C2T8

JOHN DOE (TENANT) and JANE DOE (TENANT)
26123 – 126th Avenue, Maple Ridge, BC V2W 1C4

Petition Respondents

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this Court within the time for response to petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response to Petition:

A Response to Petition must be filed and served on the Petitioner,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed Petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner claims the right to serve this pleading/petition on the Petition Respondents, * *NAME OF ALL RESPONDENTS OUTSIDE BRITISH COLUMBIA*, outside British Columbia on the ground that the proceeding is by a mortgagee in relation to a mortgage of property in British Columbia and seeks relief of the nature of sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance or delivery of possession by the mortgagee, pursuant to Rule 4-5(1) of the British Columbia Rules of Court.

(1) The address of the Registry is:

The Law Courts, 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1

(2) The ADDRESS FOR SERVICE of the Petitioner is:

c/ o Ronald A. Bakonyi
Bakonyi & Company, Barristers and Solicitors
Attention: Ron Bakonyi
206 - 1110 Hamilton Street
Vancouver, B.C., V6B 2S2
(File: Home Trust v. Irvine)
Telephone: (604) 688-7700
Fax Number for service: (604) 688-7799
Email Address for service: ron@rblaw.ca

(3) The name and address of the Petitioner's lawyer is: SAME AS ABOVE

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT:

1. A declaration that the Mortgage made under seal, dated the 3rd day of June, 2008, between the Respondent, STEWART EDWARD IRVINE, as the Mortgagor, and the Petitioner, HOME TRUST COMPANY, as a First Mortgage, and registered in the New Westminster Land Title Office on the 5th day of June, 2008, as charge number CA807959 (the "Mortgage"), registered in the New Westminster Land Title Office charging those lands and premises situate, lying and being at 26123 – 126th Avenue, in the Municipality of Maple Ridge, in the Province of British Columbia, and more particularly known and described as:

Municipality of Maple Ridge
Parcel Identifier: 017-967-465
Lot 3 Section 24 Township 12
New Westminster District Plan LMP6975

(hereinafter called the "Property").

2. A declaration that all monies secured by the Mortgage and otherwise charged upon the Property are now due and owing.
3. A declaration that the Respondent, STEWART EDWARD IRVINE, has made default under the Mortgage and of the amount of money due and owing under the Mortgage and of the amount of money required to redeem the Property.
4. A declaration that the amount of money required to redeem the Mortgage during the redemption period herein, is FOUR HUNDRED FIFTY-TWO THOUSAND ONE HUNDRED THIRTY-SEVEN DOLLARS AND TWENTY-FOUR CENTS (\$452,137.24), as at October 1, 2012, together with compound interest at the annual rate of 5.39% from and including October 1, 2012, to the date payment is received, together with the Petitioner's assessed costs of these proceedings on a Scale A basis or on any basis this Honourable Court may direct.
5. An Order that the last date for redemption of the Mortgage be set.
6. An Order that the Petitioner herein obtain personal Judgment against the Respondent, STEWART EDWARD IRVINE, in the amount of FOUR HUNDRED FIFTY-TWO THOUSAND ONE HUNDRED THIRTY-SEVEN DOLLARS AND TWENTY-FOUR CENTS (\$452,137.24), pursuant to the covenants contained in the Mortgage, together with compound interest from and after October 1, 2012, to the date of judgment or payment (and thereafter at the post-judgment interest rate), along with the Petitioner's costs of this proceeding on a Scale A basis or such other basis as this Honourable Court may direct.

7. An Order that the Petitioner do recover its costs of this proceeding on a Scale A basis or such other basis as this Honourable Court may direct with liberty to apply for increased costs should this matter become contested and that such costs form a part of the amount of money required to redeem the Mortgage.

8. An Order that upon the Respondent, STEWART EDWARD IRVINE, or any of them, paying into Court to the credit of this proceeding at the Court Registry Office, Law Courts, 800 Smithe Street, in Vancouver, British Columbia, or paying to the solicitor of record for the Petitioner or, if no such solicitor exists, to the Petitioner, the amount required to redeem the Property as aforesaid, together with the costs of this proceeding on a Scale A basis, or such other basis as this Honourable Court may direct, on or before pronouncement of either Order Absolute of Foreclosure or an Order confirming a sale of the Property, the Petitioner shall reconvey the Property free and clear of the Mortgage or any person claiming by, through or under it and shall deliver up, upon oath if required, all deeds, titles and documents in its custody, possession or power relating thereto to the Respondent so paying or to whom he shall appoint.

9. An Order that if the Property not be redeemed, the Petitioner shall be at liberty to apply for an Order Absolute of Foreclosure and upon pronouncement of Order Absolute of Foreclosure, the Respondent and all persons claiming by, through or under him shall henceforth stand absolutely debarred and foreclosed of and from all right, title, interest and equity of redemption in and to the Property and that thereupon the Petitioner do recover vacant possession of the Property.

10. An Order that the Petitioner be granted liberty to apply to This Honourable Court for a summary accounting of any amounts which become due to the Petitioner for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise since the date of pronouncement of this Order.

11. For an Order that in default of the Respondent herein paying into Court to the credit of this action at the Court the amount of money required to redeem the Mortgage prior to the expiration of the said period of redemption, the Respondent herein, his respective heirs, executors, administrators, successors and assigns, and all persons claiming by, through or under him, shall be foreclosed of all right, title and interest in and to the Property.

12. For an Order for Sale of the Property subject to the approval of This Honourable Court, and for the Petitioner herein to have exclusive conduct of such sale, and to be at liberty to list the Property for sale by way of multiple listing, the monies to be distributed pursuant to the Order of This Honourable Court.
13. For an Order for a Certificate of Pending Litigation against the Property.
14. For an Order for Writ of Possession of the property upon demand of the Petitioner following the granting of an order for the sale of the property.
15. For a Declaration of Protective Disbursement.
16. For an Order Appointing the Petitioner's representative as Receiver of the subject property;
17. For an Order for Forced Entry with authority to change locks and take whatever other steps are necessary to secure the subject property.

Part 2: FACTUAL BASIS:

1. The Petitioner, HOME TRUST COMPANY, is a Trust Company with its principal place of business located at #2300 - 145 King Street West, Toronto, Ontario.
2. The Respondent, STEWART EDWARD IRVINE, is the registered owner of the Property residing at or near 26123 – 126th Avenue, in the Municipality of Maple Ridge, in the Province of British Columbia.
3. The Respondents, JANE DOE and JOHN DOE, are believed to be the tenants of the Respondent, STEWART EDWARD IRVINE, residing at 26123 – 126th Avenue, in the Municipality of Maple Ridge, in the Province of British Columbia.

4. The Respondents, CARMEL YOKO RICHTER and SHERWIN JACK-YEN HO, are the registered owners of a charge of Second Mortgage showing a principle amount of \$110,000.00 and Assignment of Rents and registered against the subject property in the Land Title Office on September 6, 2011, under Numbers CA2177758 and CA2177759, which charge ranks subsequent in priority to the subject Mortgage of the Petitioner herein.

5. The Respondent, OLYMPIA TRUST COMPANY, is the registered owner of a charge of Third Mortgage showing a principle amount of \$20,000.00 and Assignment of Rents and registered against the subject property in the Land Title Office on June 29, 2012, under Numbers CA2632725 and CA2632726, which charge ranks subsequent in priority to the subject Mortgage of the Petitioner herein.

6. The Mortgage was entered into on or about June 3, 2008, between the Respondent, STEWART EDWARD IRVINE, and the Petitioner, HOME TRUST COMPANY, as Mortgagee, as a First Mortgage. The face amount of the Mortgage is \$464,100.00. Under the Mortgage, compound interest was charged at the annual rate of 6.65% until July 1, 2009 after which time the Respondent renewed the subject Mortgage and interest is calculated at the annual rate of 5.39%, to mature December 1, 2013.

7. Pursuant to the subject Mortgage, all the monies secured by the aforementioned instrument have been advanced by the Petitioner. Demand has been made upon the Respondent, owner, who has failed to pay.

8. Pursuant to the provisions of the Mortgage, upon such default, the whole of the monies secured under the Mortgage and remaining unpaid shall, at the option of the Petitioner, become due and payable and the same is now due and payable and has not yet been paid.

9. The amount due under the Mortgage as at October 1, 2012, is the amount of \$452,137.24 together with compound interest due thereon at the rate of 5.39% per annum, calculated semi-annually, not in advance, which amounts to \$64.87, per day, at the time of preparation of this Petition. The changing per diem rate of interest will be disclosed to the Court at the hearing of the application for Order Nisi.

Part 3: LEGAL BASIS:

1. BC Supreme Court Civil Rules 2-1 (2), 8-1 (1), (2), (4), (5)-(10), (13), (15), (18)-(22), 10-1 (1)-(5), 10-2 (1), 13-2 (1)-(34), 16-1 (1)-(4), (6), (8)-(17), 21-7 (1)-(11);
2. Appendix B of the BC Supreme Court Rules;
3. Law & Equity Act Sections 15, 18, 20; and
4. Court Order Interest Act

Part 4: MATERIAL TO BE RELIED UPON:

1. Affidavit #1 of Carolyn Furlano.

The Petitioner estimates that the hearing of the Petition will take FIVE (5) minutes.

DATE: October 10, 2012

Ronald A. Bakonyi

Signature of

☐ petitioner ☒ lawyer for petitioner

To be completed by the Court only

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this Petition

☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Master

No. _____,
Vancouver Registry

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OLYMPIA TRUST COMPANY, IN TRUST
JOHN DOE (TENANT) and JANE DOE (TENANT)**

RESPONDENTS

PETITION TO THE COURT

Home Trust v. Irvine - #23387

**RONALD A. BAKONYI
BAKONYI & COMPANY
BARRISTERS & SOLICITORS
Attention: Ron Bakonyi
#206 - 1110 Hamilton Street
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